

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 16

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte ROBERT MARTIN, JR.

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Appeal No. 2001-1894  
Application No. 09/108,741

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ON BRIEF

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Before CALVERT, FRANKFORT and McQUADE, Administrative Patent Judges

CALVERT, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1 to 3, 5 to 8, 10 and 12 to 14, all the claims remaining in the application.

Appeal No. 2001-1894  
Application No. 09/108,741

The claims on appeal are drawn to an insulated form assembly for a poured concrete wall, and are reproduced in the appendix of appellant's brief. Claim 1 is illustrative of the claimed subject matter, and reads:

1. An insulated form assembly for a poured concrete wall comprising:

a plurality of insulated forms made of a foam material;

a cap fittingly retained on opposed edges of said insulated forms; and

a band or strips circumscribing or connecting said insulated forms and said caps to pre-assemble said assembly.

The references applied in the final rejection are:

Taylor	2,781,657	Feb. 19, 1957
Larger	3,378,969	Apr. 23, 1968
Ellis	3,430,397	Mar. 4, 1969
Riefler	4,001,988	Jan. 11, 1977
Powers	4,757,656	Jul. 19, 1988
Guarriello et al. (Guarriello)	5,123,222	Jun. 23, 1992

Claims 1 to 3, 5 to 8, 10 and 12 to 14 stand finally rejected under 35 U.S.C. § 103(a) as unpatentable over Guarriello in view of either Larger, Taylor, Ellis, Powers or Riefler.

First considering the subject matter recited in independent claims 1, 8 and 14 relative to Guarriello,

Guarriello discloses a foam plastic form 10 having two generally planar opposing panels 12, 14 interconnected by interior segments 28, 30, 32, 34 defining a plurality of channels therebetween for receiving cement, each form having a configuration at the top and bottom for interlocking with other forms (col. 4, line 19, to col. 5, line 22). Guarriello does not disclose a cap on opposed edges, or a band or strips, as recited in claim 1, but the examiner takes the position that, as to each of the secondary references (answer, pages 4 to 7):

To have formed a wall or wall unit with the Guarriello et al. block forms as by connecting a plurality of blocks together utilizing a band circumscribing or a strip connecting the abutting block forms, thus allowing for preassembly of the resulting wall unit as well as providing for bracing of the resulting wall unit, would have been obvious to one of ordinary skill in the art as taught by [the secondary reference].

We will not sustain the rejection of claim 1 insofar as it is based on the combination of Guarriello and either of Larger, Ellis, Powers or Riefler, for even if the references were combined as proposed by the examiner, the resulting structure would not meet all the limitations of claim 1. Ellis discloses a brace for a wall made of cement blocks,

brick, etc., in which straps 30 apply tension to a cap 16 on top of the wall. However, even if the Ellis brace were applied to a stack of the Guarriello forms, there would not be a "cap ... on opposed edges of said insulated forms" as required by claim 1. The examiner identifies items 18, 20 of Ellis as caps, but these are all one integral member, and there is no cap on the "opposed edge" of the Ellis structure. As for Larger and Powers, the examiner identifies item 16 of Larger and item 12 of Powers as being a band or strip (answer, pages 3 and 6), but these items are disclosed as being steel rods (Larger, col. 2, lines 41 to 45; Powers, col. 4, lines 23 to 25), which we do not consider can reasonably be interpreted as the "band or strips" recited in claim 1.<sup>1</sup> Riefler discloses bands for holding together a stack of cement blocks 1, but even if a plurality of the forms of Guarriello were held together by bands as shown by Riefler, none of the bands (including peripheral band 7) would connect the forms and the

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<sup>1</sup>Webster's Third New International Dictionary (1971) defines "band" as "a thin flat encircling strip, strap, or flat belt of material serving chiefly to bind or contain something," and "strip" as "a narrow piece of about even width (a strip of cloth)."

Appeal No. 2001-1894  
Application No. 09/108,741

caps, as required by claim 1, since Riefler's caps 8, 14 (as identified by the examiner at page 6 of the answer) are not connected to blocks 1 by any of the bands 3 to 7 (band 7 goes under the caps 14, as shown in Fig. 1). Also, Riefler's rods 11 are not considered to be bands or strips, as discussed above in connection with Larger and Powers.

This leaves for consideration the combination of Guarriello and Taylor. Taylor discloses a preassembled panel P made up of individual tile units 10, which have hollow interior spaces 16, which may be filled with concrete (col. 3, lines 22 to 25).

The panel is held together by bands 36 which circumscribe the tiles, and caps 40 at the opposed edges of the panel.

According to Taylor, the use of preassembled panels allows walls, partitions, roofs, etc. to be constructed in a shorter period of time, more efficiently, and at a cheaper cost (col. 2, lines 1 to 5; also col. 4, lines 42 to 44).

In view of this disclosure of Taylor, we conclude that it would have been obvious to one of ordinary skill in the art to assemble a plurality of the foam forms disclosed by Guarriello, assembled one on top of the other (col. 4, lines 8 to 17), using circumscribing bands and caps as disclosed by Taylor. The motivation for doing so would have been Taylor's above-noted disclosure that the use of such preassembled units saves time, is more efficient, and is cheaper.

Appellant argues that the combination of Guarriello and Taylor would not have been obvious because Taylor's

circumscribing bands are disclosed as being used to prestress the tile units 10. However, while this is correct, the bands are obviously also used to hold the tiles together in a preassembled unit P. While the tiles are not forms, per se, in the Taylor apparatus, they can perform the function of forms in that Taylor discloses that they can be filled with cement, as discussed above. In any event, the advantages which Taylor discloses as resulting from preassembling a plurality of modular tile units for use in constructing walls and the like (saving time, efficiency and economy) would have suggested to one of ordinary skill the preassembling of other modular units used in such construction, such as the forms disclosed by Guarriello, in order to achieve similar advantages.

Accordingly, we will sustain the rejection of claim 1 as unpatentable over Guarriello in view of Taylor. The rejection of claims 2, 3 and 5 to 7 on that ground will also be sustained, appellant having grouped them with claim 1 (brief, pages 5 and 6).

Appellant has grouped independent claim 8 with dependent claims 10, 12 and 13 (id.). The rejection of these claims as

unpatentable over Guarriello in view of Taylor will also be sustained, since we conclude that claim 8 is unpatentable over this combination of references for the same reasons as claim 1, supra. The rejection of these claims over Guarriello in view of either of the other four secondary references will not be sustained for the reasons discussed above concerning claim 1.

The rejections of claim 14 will not be sustained. This claim is not considered obvious over the combination of Guarriello and Larger, Ellis, Powers or Riefler for the same reasons as claim 1. We also conclude that it is unobvious over Guarriello in view of Taylor, since the examiner does not identify, nor do we find, where either of these references discloses or would have suggested a loop on the end of the band, as recited in the claim.

#### Conclusion

The examiner's decision to reject claims 1 to 3, 5 to 8, 10 and 12 to 14 is affirmed as to claims 1 to 3, 5 to 8, 10, 12 and 13, and reversed as to claim 14.



Appeal No. 2001-1894  
Application No. 09/108,741

No time period for taking any subsequent action in  
connection with this appeal may be extended under 37 CFR  
§ 1.136(a).

AFFIRMED-IN-PART

IAN A. CALVERT	)	
Administrative Patent Judge	)	
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	)	
	)	BOARD OF PATENT
CHARLES E. FRANKFORT	)	APPEALS AND
Administrative Patent Judge	)	INTERFERENCES
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JOHN P. McQUADE	)	
Administrative Patent Judge	)	

Appeal No. 2001-1894  
Application No. 09/108,741

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Appeal No. 2001-1894  
Application No. 09/108,741

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